Attorney Docket No.: P51369

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fulston, *et al.*

Serial No.: 10/523,710 Group Art Unit No.: 1651

Filed: 04 February 2005 Examiner: Marx, Irene

For: METHODS FOR THE ISOLATION AND PURIFICATION OF ANSAMITOCINS

Commissioner of Patents
Alexandria, VA 22313-1450

RESPONSE TO REQUIREMENT FOR RESTRICTION UNDER 35 U.S.C. §121

Sir:

Applicants respectfully request consideration of this response submitted in reply to the Restriction Requirement dated 12 March 2007. A one-month (31 day) period was set for response. This response is timely filed on or before 12 April, 2007. Thus, Applicants believe no fees are due. Nonetheless, the Director is hereby authorized to deduct any fees required in association with submission of this amendment and response from Deposit Account No. 19-2570.

Claims 1-7 are pending in the application. Claims 1-7 have been made the subject of a restriction requirement under 35 U.S.C. §§ 121 between the inventions of:

I. Claim 1 drawn to a process of capture of ansamitosins onto silica gel.

II. Claim 2 drawn to a process of isolation using no evaporative steps.

III. Claim 3 drawn to a process of purifying ansamitosins using a solvent system.

IV. Claim 4 drawn to a process of purifying of toluene extract using activated carbon.

V. Claim 5 drawn to a process of purifying of ansamitosin from silica chromatography using a solvent.

VI. Claim 6 drawn to a process of purifying an eluate in a toluene/polar alcohol mixture.

VII. Claims 7 drawn to a process of cystalizing ansamitosins using halogentated hydrocarbon and a polar solvent.

Upon review of the Detailed Action provided by the Examiner, the Applicants provisionally elect the subject matter of Group I, claim 1, with traverse. The Applicants request a recombination of Groups I-VII. Applicants submit that neither criterion for a restriction requirement exists with respect to the claims of this application. Applicants respectfully submit that the PTO guideline

MPEP § 803 provides two criteria for a proper requirement for restriction between patentably distinct inventions as follows:

> "(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and
>
> (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02)."

Applicants respectfully submit that the term "independent" is defined in the MPEP as "no disclosed relationship between the two or more subjects disclosed." The present application discloses an integral relationship among these claims for methods of purifying ansamitocins. Furthermore, the MPEP defines the term "distinct" to mean that "two or more subjects...are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER." As discussed above, Applicants respectfully submit that by restricting the claims of the instant application to Groups I-VII, the Examiner is alleging that each process of purifying ansamitocin is distinct. Applicants respectfully disagree, and request that Groups I-VII be combined.

In addition, Applicants respectfully submit that even if, *arguendo*, the claims as grouped by the Examiner are patentably distinct, the Examiner must establish reasons for insisting upon restriction. see MPEP § 808.02. This reason can be established by one of the following: a separate classification; a separate status in the art; or a different field of search. Applicants respectfully submit that the Examiner has not met the second criteria for a issuing a restriction requirement based on any of these reasons.

Should the restriction become final, the Applicants reserve the right to prosecute, in one or more patent applications, the canceled claims, the claims to non-elected inventions, the claims as originally filed, and any other claims supported by the specification.

Respectfully submitted,

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